Diverting Young Offenders from the formal Justice System

Juvenile Mediation/Reparation Scheme

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The title of this conference ‘Preventing Juvenile Crime’ is quite interesting. Whilst we all accept the juvenile crime phenomenon is real, it is encouraging to see that the Australian Institute of Criminology is taking a positive approach to juvenile crime by advocating that it should be prevented rather than accepting it as a 'fait accompli'. Crime prevention is an integral part of policing.

Juvenile Crime

'Kids to-day are getting away with murder'.

'Juveniles have no respect for anything or anyone'.

'The law now has so many protections for young crims, we may as well give up and go home'.

'Young offenders just get a slap on the wrist'.

These are quotes from fellow police officers and the printed media. It is the popular view in the community that there has been a dramatic increase in juvenile crime, particularly crimes of violence. Many feel that the most effective way to handle the problem is for courts to severely punish young offenders and ensure that greater numbers are locked up and kept off the streets. It is thought that heavier sentences would ensure that young offenders do not re-offend. In actual fact none of these assumptions are correct.

There is some evidence to show that more young people are being charged with more offences than in the past. It is not clear whether this means that children are actually committing more crimes or whether they are just being caught and charged more often. The real situation probably lies somewhere in between.

However, often there is little point in punishing an offender, as the punishment can be shown to be counterproductive. With juveniles this is often the case. Most adolescent
offenders do not return to court. By charging them we are often condemning them to further
and deeper involvement in the juvenile justice system, which is, it is submitted, a failure.

To address this failing justice system police forces across this country **must** develop
and implement diversionary processes for appropriate young offenders. The concept of
diversion as a prevention tool, seems to be perfectly tailored to policing, and with the proper
application of the diversion concept, policing will make a significant headway in the battle
against juvenile crime.

*What is juvenile diversion?*

Juvenile diversion in the strictest sense is the referral of a youth who has violated the law to
an alternative program, rather than having that youth going through an adjudication process
into the juvenile justice system. Juvenile diversion, in a broader sense, is the development of
meaningful alternatives to be used in solving the juvenile crime problem in our society other
than what is currently being offered within the juvenile justice system.

*Why is juvenile diversion necessary?*

A juvenile diversion system is necessary as an alternative to the very costly, overcrowded,
and too often ineffective juvenile justice system. Much research has shown that juvenile
institutions are not rehabilitative’. For example, Cressy (1960) commented ‘they lead to an
increase rather than decrease in antagonism to authority’. Lipton, Martinson, Wilks (1975)
said ‘they are criminogenic rather than rehabilitative. In addition, Rutherford and Bengur
(1976) said ‘they are very expensive to operate’.

Do we need more research to justify the concept of diversion?

*The New South Wales experience*

The last decade in New South Wales has seen the introduction of a wide range of new
juvenile diversionary programs and policies. Many of them have been drawn from research
findings and recognise the transitory nature of juvenile crime, the counter-productive effects
of programs and the dangers of net-widening. Underlying these reforms in New South
Wales and in other parts of the world is a dissatisfaction with the traditional approach to
juvenile justice which was based on the adult correctional model although harsher in its
application.

The key reforms from a police perspective were firstly, the police cautioning program;
and secondly, the juvenile and mediation/reparation scheme.

Although not one of the new reforms, the ‘warning on the run’ has been used by New
South Wales Police as a discretionary power for some time.

When police detect a child offender committing a ‘trivial’ offence, they may take no
formal action and

- issue a ‘warning’ (either on the run, or at a police station); and
- record the particulars of the child and the offence in the official police notebook.

The matter is dispensed with at this point. No centralised record is made of this
encounter.

In 1984 the New South Wales Labor Cabinet approved the introduction of a
cautioning scheme. The scheme commenced operation on 1st September 1985.

The two major objectives of the scheme are:

- to divert early and less serious offenders who would have otherwise gone to
court; and
to allow the court to concentrate its resources on more recidivist or serious cases, or cases where the facts are disputed.

A caution is a formal procedure whereby if a child admits the commission of an offence, then at an arranged time they attend a police station accompanied by their parent, guardian or other chosen adult, and an official caution will be administered by a senior police officer. The child must agree to the caution process.

Cautions are not available for offences which must be dealt with by way of indictment. Cautions are only available for summary offences and offences which are capable of being heard summarily.

The underlying rationale for this is to restrict the applications of the cautioning scheme to the less serious offences.

When the New South Wales Liberal/National Party coalition government came to power some 12 months ago, the Police Minister, Mr Ted Pickering immediately abolished the right to a caution for a child who commits any offence involving a motor vehicle, for example, stealing, or being knowingly carried in a stolen vehicle.

There is no right to a caution even for first offenders committing minor crimes. The investigating police will retain the discretion to determine whether a juvenile offender will receive a caution or face a charge.

A child can receive more than one caution. Prior criminal record or previous cautions will not necessarily preclude the issuing of the caution.

All cautions are recorded in the Police Central Names Index computer system and the police can consult these records for the purpose of criminal investigation. Most Australian jurisdictions have some form of juvenile cautioning. In New South Wales in the last half of 1988 the juvenile cautioning rate was 2 per cent of all formal interventions. In Queensland and in Victoria it is considerably higher. By comparison, the scheme is being used much more conservatively in New South Wales. Furthermore, in New South Wales cautions are given in the vast majority of cases only to first offenders who have committed less serious offences. The more serious and recidivist offenders are still being dealt with by the courts.

Although the cautioning scheme represented a much needed reform in New South Wales, its introduction was associated with some degree of controversy and confusion. Media, police and community perceptions of the scheme were at times negative, based on the incorrect assumption that serious offences had been decriminalised by the scheme. In fact, the guidelines issued to the police are relatively strict.

**Juvenile Mediation/Reparation Scheme**

The Juvenile Mediation/Reparation Scheme for young offenders was a new innovation for Australia although hundreds of similar schemes for juveniles and adults have been developed in the United States, Canada and England over the past years. These schemes have been shown to be successful in encouraging rehabilitation in the justice system.

The scheme represented the first major step to be taken by New South Wales towards young offenders being encouraged to make direct amends to victims of crime. This scheme places the responsibility of the offence directly on the young offender and addresses the plight of the victim, as it is sometimes said that criminal justice proceedings are substantially offender-oriented. Although certain schemes provide financial compensation to victims there have been no formal avenues for direct contact between the victim and offender, or for the possible making of amends to those persons who have been harmed.

Mediation schemes in New South Wales have operated from Community Justice Centres since 1980 by providing an avenue for the resolution of minor civil and criminal disputes (such as disputes between neighbours, relatives, landlords and tenants) shown by experience to be under-responsive to conventional law enforcement procedures. Overseas mediation/reparation schemes for offenders have been in operation for some years with
some success (depending on the type of offences) both as a pre-court and post-court disposition.

Mediation/reparation schemes are particularly appropriate for young people because they encourage a greater sense of responsibility. Young offenders are given the opportunity of facing the consequences of their action in a way that should foster reform. The scheme also provides educational elements to the young offender that allows them to realise the human consequences of their crime.

The scheme provides the victim with an avenue of gaining recompense, in a symbolic sense, for the offence committed against them. The offender may apologise directly to the victim; may perform some work directly for the victim or in an area agreed to, by the victim and offender. At all times a neutral person (the mediator) ensures that the needs of both parties are attempted to be satisfied.

The objectives of the scheme are:
- to provide social education for the young person regarding the human consequences of their offence;
- to provide the victim of the offence with an avenue for reparation;
- to ensure that the victim is recognised as part of the criminal justice process; and
- to provide the young offender with the opportunity of repairing in some symbolic way the damage done by their crime by making amends.

Criteria for police referral to the scheme
- The young person accepts responsibility for the offence;
- there is an identifiable victim such that there is some link between the damage and the victim;
- the young person is likely to obtain some benefit from their participation in the scheme;
- young people who are heavily dependent on alcohol or unlawful drugs are not suitable for the scheme; and
- before agreeing to participate the young person has been informed of their right to seek legal advice.

The initial process

A young person comes under police notice for committing an offence. The person is then apprehended and taken to a police station.

If appropriate and if the offender admits to the offence, a statement is taken by the police officer. The offender is then asked if he wants to participate in the scheme.

If the offender indicates that he does, a referral card is completed and given to the offender, who is then directed to present to the Community Justice Centre nominated by the police officer.

In the meantime the relevant information about the offender, the victim and the offence is telephoned through to the Community Justice Centre. This is the end of police involvement until such time as the mediation or reparation process is complete or the offender withdraws from the scheme.

The mediation process

After the Community Justice Centre organises a time convenient for a meeting between victim and the offender the meeting (mediation session) is held with the parties (victim and offender) and two trained and accredited Community Justice Centre mediators. The young person is entitled to have a parent, guardian or other adult present at the time of the session.
Mediation is a dispute settlement process that provides an acceptable, neutral and impartial third party (the mediator) whose role it is to facilitate communication and understanding between the parties and in the context of the scheme to assist them in formulating an appropriate reparation agreement given the circumstances disclosed in the mediation session.

Mediation is a voluntary process and at any stage of a session either party can reject further participation by the mediator, who has no formal tenure other than that granted by the parties. The mediator has no power to make decisions or to enforce suggestions and recommendations affecting the settlement of the dispute.

Reparation by the young person may include:

- an apology;
- work for the victim;
- service in the community or for another person nominated as suitable by the victim;
- return of stolen property; or
- repairing the resultant damage to the victim's property.

The scheme does not generally cover cash compensation payments because of the danger of the Scheme becoming a system for imposing fines or seen as a debt collection scheme as has occurred with some American schemes. However, if compensation is appropriate in a particular situation, the young person is over 16 years and approval is given by the Director of the Community Justice Centre following the mediation process, then cash compensation may be a form of reparation, but only in a nominal or symbolic sense rather than as real monetary value for the harm done.

Supervision of agreements

Any agreement made between the parties at a mediation session is monitored or supervised by the Community Justice Centre who uses mediators for this purpose.

The amount and type of monitoring required in any particular case varies according to:

- the need and circumstances of the victim;
- the type of offence and surrounding circumstances;
- the character of the offender; and
- the specific conditions of the agreement reached between the parties.

Referral back to referrer and finalisation of matter

A matter is referred back to the referrer (that is police) for reason of a breakdown in the process or the completion of the process.

The Community Justice Centre can refer a matter back to the police before it is finalised if:

- either the victim or offender are not willing to participate;
- the mediation broke down or no agreement is reached between the parties; or
- the mediated agreement broke down and cannot be resolved by further conciliation or mediation.

On the other hand once a matter has proceeded through the mediation process and the agreement has been monitored then the supervisor or monitor reports to the Community Justice Centre on the outcome and the Community Justice Centre reports the matter back to the police. The police then take no further action on such matters.
As with police cautions, records of mediation referrals will be maintained by police and can be referred to by police for the purpose of criminal investigation or as a guide to appropriate action should a young person come under notice for further offences.

**Benefits of such a scheme**

The victim can benefit by:

- the opportunity to meet the offender in a setting where feelings and fears can be vented;
- the opportunity to have questions answered;
- having a direct, personal role in the resolution of the case;
- the possibility of some amends being made for the damage done;
- developing an understanding of the young offender and having the opportunity to offer forgiveness;
- encouraging a sense of responsibility in the young person.

The young person can benefit by:

- seeing their victims as a real person through meeting with them personally;
- developing an understanding of the human consequences of their actions;
- having the opportunity to make up for what they have done in a personal way;
- having a direct, personal role in decisions about the consequences of their actions, with the resulting sense of ownership of the decisions;
- being diverted from the court system which may further lock the young person into a path of offending.

The community can benefit by:

- being able to deal with some of its own problems instead of looking to the state for solutions;
- the likelihood of lowering the number of young offenders who get caught in the recidivist cycle;
- the reduction of conflict by demonstrating dispute resolution methods to the community;
- the likelihood of victims and offenders gaining an increased understanding of the justice system.

The police can benefit by:

- having a wider range of options available for dealing with a broad range of young offenders;
- having an option which can bring home the personal consequences of their actions to young offenders;
- having more time and resource available to deal with more serious offenders.

When the Liberal National Party Coalition Government came to power in New South Wales in 1988, the Minister for Police, Ted Pickering, withdrew police participation from the Scheme.
Conclusion

In relation to the changes outlined, I am confident that these initiatives are striking an appropriate balance between the requirements for community protection, the requirements of the judicial process, the needs of the young offenders as well as the concerns of the community and of the government.

Whilst the new strategies and programs are not claimed to provide a panacea for the complex problems of youth crime, I do believe that our ultimate goal, the successful community integration of young offenders, is more likely to be realised through these measures.

References

Cressy, Donald 1960, 'Epidemiology and Individual Contact: a case for criminology', *Pacific Sociological Review*, vol. 3.
